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August 3, 2012

Ex Parte via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Basic Service Tier Encryption; Compatibility Between Cable
Systems and Consumer Electronics Equipment,*
MB Dkt. No. 11-169, PP Dkt. No. 00-67

Dear Ms. Dortch:

On August 2, 2012, Avner Ronen and the undersigned of Boxee, Inc., and Alan Fishel of Arent Fox LLP, spoke via conference call with Zachary Katz, Chief of Staff to Chairman Genachowski; Sherrese Smith, Chief Counsel and Senior Legal Advisor to Chairman Genachowski; Lyle Elder, Attorney-Advisor to Chairman Genachowski; and Michelle Carey, Deputy Chief, Media Bureau. On a separate conference call on the same day, the undersigned and Alan Fishel spoke with the following members of the Media Bureau: Michelle Carey, Deputy Chief; Alison Neplokh, Chief Engineer; Mary Beth Murphy, Chief, Policy Division; Steven Broeckaert, Senior Deputy Chief, Policy Division, and Brendan Murray, Attorney Advisor, and Susan Aaron, from the Office of General Counsel. On both calls, we discussed the commitments made by the six largest cable operators in a letter to Chairman Genachowski (the "Operator Commitments")¹ and Boxee's previously filed response thereto.²

We emphasized that Boxee continues to believe that in order to fairly balance the needs of cable operators, consumers, and third-party device manufacturers, and to provide a comparable successor to ClearQAM, a basic tier encryption Order should require any encrypting operator to offer a hardware-free long-term solution for third-party devices to access the basic tier.

Nevertheless, should the Commission instead move forward with an Order based on the NCTA Letter, such an Order should, at a minimum:

¹ See Letter from Michael K. Powell, President and CEO, NCTA, to Hon. Julius Genachowski, Chairman, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (July 25, 2012) (the "NCTA Letter").

² See Letter from Melissa Marks, General Counsel, Boxee, Inc., to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (July 30, 2012) (the "Boxee Letter").

- Specify that an operator's compliance with the permitted options is an enforceable prior condition to encryption;³
- Clarify the requirements of a "standard home networking capability" as used in Option 1, including its relationship to an "open industry standard" as used in 47 CFR 76.640(b)(4)(iii) and that any such networking standard must be licensed on fair, reasonable and non-discriminatory terms;⁴
- Require that specifications for operator-supplied hardware, under Option 1 of the Operator Commitments, including networking protocols used thereby, and development units of such devices be made available to third-party device makers for development purposes in advance of commercial use of such hardware;⁵
- Clarify requirements that a hardware-free method under Option 2 of the Operator Commitments must meet in order to deliver a comparable experience to ClearQAM, and that the technology for any such method must be licensed on fair, reasonable and non-discriminatory terms to third-party device makers;⁶ and
- Emphasize that the Order is intended to provide consumers in encrypted systems with a meaningful ability to choose to access the basic tier using a non-cable operator-provided device, and should consumers or third-party device makers notify the Commission that the options adopted by the operators subject to the Order do not reasonably achieve that goal, the Commission will promptly consider taking action in response to such notice.

Pursuant to the Commission's rules, this notice is being filed in the above-referenced dockets for inclusion in the public record.

Respectfully Submitted,

/s/ Melissa Marks

Melissa Marks
General Counsel

³ See Boxee Letter at 5.

⁴ See Letter from Julie M. Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67, CS Dkt. No. 97-80 (July 31, 2012) (the "CEA Letter").

⁵ See Boxee Letter at 4-5; CEA Letter at 3.

⁶ See Boxee Letter at 3-4; CEA Letter at 3.

cc (via email): Zachary Katz
Sherrese Smith
Lyle Elder
Michelle Carey
Alison Neplokh
Mary Beth Murphy
Steven Broeckaert
Brendan Murray
Susan Aaron